



4332-90-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[RR83530000, 189R5065C6, RX.59389832.1009676]

National Environmental Policy Act Implementing Procedures for the Bureau of Reclamation (516 DM 14)

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed revisions; request for comments.

SUMMARY: This notice announces the intent to revise the Bureau of Reclamation (Reclamation) procedures for compliance with the National Environmental Policy Act of 1969 (NEPA) in the Departmental Manual (DM) at 516 DM 14. The proposed revisions are to establish a new Categorical Exclusion (CE) for the transfer of title of certain projects and facilities from Reclamation to a qualifying non-Federal project entity. The new CE would allow for more efficient review of appropriate title transfer actions. This notice is also an invitation to comment on Reclamation's proposed new CE.

DATES: Submit written comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Send written comments on the proposed new CE to Title Transfer CE Coordinator, Bureau of Reclamation, Mail Stop 84-53000, Denver Federal Center, Denver, CO 80523; or by email to tce@usbr.gov. The public can review the CE substantiation documentation at www.usbr.gov/title. The web address for Reclamation's current procedures, at Series 31, Part 516, Chapter 14, dated May 27, 2004, is <https://www.doi.gov/elips/browse>.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Cunningham,
Environmental Compliance Division, Bureau of Reclamation, (303) 445-2875; or via
email at ttce@usbr.gov.

SUPPLEMENTARY INFORMATION:

Background.

Reclamation was founded in 1902. Its original mission was one of civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. Results are well known in the hundreds of projects that were developed to store and deliver water. That substantial infrastructure made Reclamation the largest wholesale supplier of water and the second largest producer of hydropower in the United States.

Title Transfer.

Title transfer is a voluntary conveyance of ownership (title) for water projects, portions of projects, or project facilities such as dams, canals, laterals, and other water-related infrastructure and facilities to beneficiaries of those facilities. Title transfer divests Reclamation of responsibility for the operation, maintenance, management, regulation of, and liability for the project, lands, and facilities to be transferred. It also provides the non-Federal entity with greater autonomy and flexibility to manage the facilities to meet their needs, in compliance with Federal, state, and local laws and in conformance with contractual obligations. The transfer of title of a project or set of facilities will, in effect, sever Reclamation's ties with that project or those conveyed facilities.

Under the Reclamation Act of 1902, the responsibility for operations, maintenance,

and replacement of facilities can be, and often is, contractually transferred to the water users. Title or ownership of facilities and projects, however, must remain with the United States until Congress specifically authorizes their transfer. Since 1995, Reclamation has been working closely with qualifying entities of specific projects and has conveyed over 30 projects and/or project-related facilities, including dams, reservoirs, canals, laterals, buildings, project lands, and easements.

Transfer of title is a Federal action under NEPA. NEPA requires that when a major Federal action would have significant impacts on the quality of the human environment, a statement be prepared to describe the impacts and effects on the human environment associated with the Federal action. When a Federal agency determines that a certain category of actions will not normally have an individually or cumulatively significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required, that category of actions may be excluded from further NEPA review (40 CFR 1508.4).

Reclamation proposes to establish a new CE to facilitate the transfer of title to a limited set of simple, uncomplicated projects and/or project facilities. The new CE would be added to the DM at 516, chapter 14, in section 14.5, paragraph F. entitled, “Title Transfer Activities.”

Text of Proposed Addition to 516 DM 14, section 14.5 Categorical Exclusions:

F. Title Transfer Activities

(1) *“Transfer from Federal ownership of facilities and/or interest in lands to a qualifying entity where there are no competing demands for use of the facilities, where the facilities are not hydrologically integrated, where, at the time of transfer, there*

would be no planned change in land or water use, or in operation, or maintenance of the facilities and where the transfer would be consistent with the Secretary's responsibilities, including but not limited to the protection of land and water resources held in trust for federally recognized Indian tribes and ensuring compliance with international treaties and interstate compacts."

The CE would be limited to the transfer of projects and/or project facilities from Federal ownership to a qualifying entity, which means an agency of State or local government or Indian tribe, a municipal corporation, quasi-municipal corporation, or other entity such as a water district that, as determined by the Secretary, has the capacity to continue to manage the conveyed property for the same purposes for which the property has been managed under Reclamation law. Accordingly, projects involving the following considerations of a qualifying non-Federal entity would generally be *eligible* to be considered for the title transfer CE:

1. The potential transferee must demonstrate the technical capability to maintain and operate the facilities and lands on a permanent basis and an ability to meet financial obligations associated with the transferred assets.
2. The potential transferee must affirm that they have no plans to change the maintenance, operations, or use of the lands and water associated with the transferred facilities.
3. The potential transferee must ensure that there are no competing demands for use of the transferred facilities.
4. The potential transferee must ensure that the facilities proposed for transfer are not hydrologically integrated with other facilities thereby impacting other contractors,

stakeholders or activities.

5. The potential transferee must ensure that the United States' Native American trust responsibilities are satisfied prior to taking the action. Outstanding Native American claims that are pending before the Department of the Interior (Department) and that would be affected by the proposed transfer must be resolved prior to application of the CE to the transfer.

6. The potential transferee must ensure that issues involving interstate compacts and agreements are resolved and treaty and international agreement obligations are fulfilled prior to transfer.

7. The potential transferee must assume responsibility for all commitments and agreements into the future.

8. Potentially affected state, local, and tribal governments, appropriate Federal agencies, and the public will be notified of the initiation of discussion to transfer title and will have: (a) the opportunity to voice their views and suggest options for remedying any problems; and (b) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner. Once Reclamation has negotiated an agreement with a transferee, Reclamation will seek legislation to authorize the negotiated terms of the transfer of each project or facility.

Eligibility for this CE would be determined by Reclamation, based on results of on-site inspections, surveys, and other methods of evaluation and documentation prepared by Reclamation to determine the presence or absence of the exceptions. To determine that a proposed title transfer fits within the CE, Reclamation would review the proposal to

determine that all the following apply:

1. The Departmental extraordinary circumstances listed at 43 CFR 46.215 would not be triggered by the title transfer action.

2. The title transfer action would not change:

- a. operation and maintenance of the facilities or lands transferred;
- b. land or water use.

3. The title transfer action would not involve any unresolved issue associated with compliance with interstate compacts and agreements; meeting the Secretary's Native American trust responsibilities; fulfilling treaty and international agreement obligations.

Even for a title transfer action that meets these criteria, Reclamation may, within its discretion, decide to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) instead of applying the CE.

Basis for Establishing the Categorical Exclusion.

To date, Reclamation has prepared EAs and made findings of no significant impact (FONSI) on each of the eight projects shown below, indicating location and EA/FONSI date. These EAs and FONSIs substantiate Reclamation's record to demonstrate that no individually or cumulatively significant effects are typically attributable to the eligible types of activities that would be included in the proposed CE. The EA and FONSI documentation for the following projects is available at www.usbr.gov/title:

1. Clear Creek Unit, Central Valley Project, California, 1998.
2. Distribution System to Carpinteria Valley Water District, California, 2000.
3. Distribution System to the Montecito Water District, California, 2001.
4. Robert B. Griffith Water Project, Nevada, 2001.

5. McGee Creek, Oklahoma, 2006.
6. Newlands Project Headquarters and Maintenance Yard Conveyance, Nevada, 2007.
7. Arbuckle (partial), Oklahoma, 2014.
8. Water Distribution System to Goleta Water District, California, 2007 (transfer pending).

Reclamation has prepared two EISs on title transfer proposals and two EAs for projects that involved more complex actions than those that would meet the eligibility criteria. Reclamation has also prepared 12 EAs and FONSIIs on title transfer proposals for which mitigation was applied to reduce impacts to less than significant. Several of these proposals involved issues of concern including sites of interest to tribal communities and adverse effects to historic properties.

The full complement of these EAs, FONSIIs, and EISs and Reclamation's knowledge and experience contribute to the body of work Reclamation has used to analyze its title transfer actions and validate its definition of projects for which the proposed CE would be used. Based on the consideration of the types of projects that meet the eligibility and exception criteria above, Reclamation proposes to determine that this category of actions would not individually or cumulatively have a significant effect on the quality of the human environment.

Reclamation invites comments on this proposed CE and will consider all comments received. When Reclamation makes a determination on establishing a new CE, the new language would be incorporated into 516 DM 14 under internal Departmental administrative procedures. At that time, Reclamation intends to employ

the same internal Departmental administrative procedures to make routine updates to the DM, including references to regulations and policies, organizational changes, and formatting.

Public Disclosure Statement.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and Council on Environmental Quality regulations (40 CFR 1507.3).

Michaela E. Noble

Director

Office of Environmental Policy and Compliance

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